APPEAL NO. 020116
FILED FEBRUARY 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 29, 2001, and again on December 6, 2001. The hearing officer resolved the sole issue before her by determining that the appellant's (claimant) claimed injury occurred while the claimant was in a state of intoxication, as defined in Section 401.013, from the introduction of a controlled substance, thereby relieving the respondent (carrier) of liability for compensation pursuant to Section 406.032. The claimant appealed, asserting that the hearing officer failed to make a specific determination that he did not have the normal use of his mental and physical faculties, and that there was no chain of custody to protect the integrity of the sample taken and subsequently tested. The carrier responded, urging affirmance.

DECISION

We affirm.

The hearing officer did not err in determining that the claimant's _____, work-related injury was not compensable because the claimant was intoxicated, as defined by Section 401.013 of the 1989 Act, due to his use of statutorily controlled substances and dangerous drugs, thereby relieving the carrier of liability for paying compensation under Section 406.032(1)(A). Documentary evidence in the record supports the hearing officer's findings and conclusions on this issue, including a drug screen and reports from three different physicians. All show that the claimant tested positive for marijuana on the day of his accident. The claimant offered testimony that, despite the drug screen results, he had full use of his mental and physical faculties at the time of the accident. The claimant further introduced a statement from his manager which stated that the claimant appeared to be performing his job duties in a satisfactory manner on the date of the accident, and a report from a reviewing physician who opined that the claimant did not have any mental or physical detriment, nor was he intoxicated at the time of the accident. The carrier submitted reports from two separate reviewing physicians. One physician opined that the claimant was under the influence of an illegal substance and that it was his professional opinion that there was a serious detriment to the claimant's physical and mental functioning at the time of the accident. The second physician opined that to a reasonable medical probability, the claimant was intoxicated and that the usage was probably within four to six hours.

While we agree with the claimant that the hearing officer failed to make a specific determination that the claimant did not have the "normal use of his mental or physical faculties" at the time of the accident, she did make a determination that he was intoxicated as defined in Section 401.013, which does contain that language. We cannot say that the hearing officer's failure to use the specific language of Section 401.013 constitutes reversible error. The claimant next asserts that there was no chain of custody presented

into evidence to protect the integrity of the sample taken and tested. We conclude that this is an evidentiary issue which should have been raised during the hearing. If the claimant felt that the wrong sample was tested and relied upon by the reviewing doctors, an objection should have been lodged at the time the reports of the experts who relied upon the screen were proffered. As the claimant failed to object to the evidence at the hearing, he has waived his right to do so on appeal. While the claimant did raise this argument in his closing statement, there was no objection to the reports and no evidence submitted as to their authenticity or validity. Of note is the fact that all three medical experts relied on the same drug screen results in formulating their opinions. We cannot say that the hearing officer improperly considered any evidence in this case.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). This tribunal will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we cannot say that the hearing officer erred in finding that the claimant did not meet his burden of proving he had the normal use of his mental or physical faculties at the time of his injury.

The hearing officer's decision and order are affirmed.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TX 78701.

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge